



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 117**

**[Docket No. USCG-2018-0968]**

**RIN 1625-AA09**

### **Drawbridge Operation Regulations; Old Fort Bayou, MS**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to change the operating schedule that governs the State Road 609 highway bascule bridge across the Old Fort Bayou mile 1.6, Ocean Springs, Harrison County, Mississippi. This proposed action would allow the bridge to close to vessel traffic from 6:30 a.m. to 8:00 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays and require a 12 hour notification to open the bridge to vessels on Thanksgiving Day, Christmas Day and New Year's Day. This proposed action is intended to enhance vehicle safety and allow the bridge owner to effectively manage bridge operations during federal holidays.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0968 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or e-mail Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671-2128, email Douglas.A.Blakemore@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
MDOT	Mississippi Department of Transportation
OMB	Office of Management and Budget
Pub. L.	Public Law
NPRM	Notice of proposed rulemaking
§	Section
SR	State Road
U.S.C.	United States Code

**II. Background, Purpose and Legal Basis**

MDOT has requested to change the operating requirements for the SR 609 highway bascule bridge across the Old Fort Bayou mile 1.6, Ocean Springs, Harrison County, MS. This bridge currently operates according to 33 CFR part 117.681 and opens on signal; except that, from 9 p.m. to 5 a.m., the draw opens on signal if at least eight hour notice is given. At this bridge location the waterway is used by small commercial, recreational and fishing vessels. The bridge has a vertical clearance of 26’ above mean high water in the closed to vessel position.

MDOT has requested two changes to the regulations. They asked to close the

bridge to vessel traffic from 6:30 a.m. to 8:00 a.m., from 10:45 a.m. to 12:30 p.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays and require a 12 hour notification to open the bridge to vessels on Thanksgiving Day, Christmas Day and New Year's Day. The first change is needed to prevent unsafe driving conditions created when the bridge opens to vessels during morning and evening commuting hours. The second change would allow MDOT to remove the bridge tender during three federal holidays when there has been almost no bridge openings.

The Coast Guard allowed MDOT to temporarily change the bridge operating schedule to measure the impacts to vehicle traffic that were created when the bridge opened to vessels. For a 120 day period the bridge did not open to vessel traffic from 6:30 a.m. to 8:00 a.m., 10:45 a.m. to 12:30 p.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays. The Coast Guard published a Notice of Temporary Deviation from the regulations and a request for comments concerning these changes on February 4, 2019, Federal Register Volume 84, number 23, Monday, February 4, 2019. Two comments were received during this temporary deviation. 1 comment was in favor of the change and one comment that did not refer to this regulation change. During this period there were no vehicle or vessel queues created by this temporary operating schedule.

After this temporary deviation the bridge returned to its normal operating schedule. Over 88 days MDOT measured the vehicle and vessel queues created when the bridge opened for vessels during the above commute hours. MDOT's analysis of this data demonstrated that during the above commuting periods vehicle queues were created when the bridge opened for vessels and that the queues backed up traffic on SR 609 and

on U.S. Highway 90. U.S. 90 is located south of the bridge and perpendicular to SR 609. These vehicle queues presented an increased potential for rear end vehicle collisions on the U.S. 90 Highway. There were no vessel queues during this period.

From 2014 through 2017 this bridge opened once for vessels on Thanksgiving Day, Christmas Day and New Year's Day.

The Coast Guard is issuing this NPRM under authority 33 U.S.C. 499.

### **III. Discussion of Proposed Rule**

The Coast Guard's decision to promulgate a drawbridge regulation depends primarily upon the effect of the proposed rule on navigation to assure that the rule provides for the reasonable needs of navigation after consideration of the rule on the impact to the public. The Coast Guard must ensure that bridges across navigable waters do not unreasonably obstruct waterway traffic and at the same time provide for the reasonable needs of land traffic. Drawbridge operations must balance the needs of vessel, vehicle, rail, pedestrian and recreational traffic in the overall public interest.

Closing the bridge to vessel traffic in the morning and evening commuting hours appears to reduce vehicle queues while not creating vessel queues. The reduction in vehicle queues enhances safety by preventing vehicles from backing up on U.S. 90 highway.

Since vessel queues were not created during this test the Coast Guard has determined that closing the bridge to vessel traffic in the morning and evening commute hours continues to provide vessels with the reasonability to use the waterway.

The Coast Guard does not agree that the bridge should close to vessels from 10:45 a.m. to 12:30 p.m. Allowing this change would add another 1 ½ hours that vessels would

have to wait to transit through the bridge. This unreasonably impacts navigation. MDOT should implement traffic measures during this time period to reduce vehicle queues.

Since this bridge opened once to vessels from 2014 through 2017 on Thanksgiving Day, Christmas Day and New Year's Day, requiring a 12 hour notice to open would not impact navigation.

Additionally the bridge is required to open for emergencies according to 33 CFR 117.31.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. This regulatory action determination is based on the ability that vessels can still open the draw and transit given advance notice. Those vessels with a vertical clearance requirement of less than 26 feet above mean high water may transit the bridge at any time. Additionally according to 33 CFR 117.31 (b) the drawtender shall take all

reasonable measures to have the draw opened, regardless of the operating schedule of the draw, for passage of certain vessels during emergency situations. We believe this proposed change to the drawbridge operation regulations at 33 CFR 117.675(a) will meet the reasonable needs of navigation.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The bridge provides a 26 foot vertical clearance at mean high water that should accommodate most present vessel traffic and the bridge will continue to open on signal during most daylight hours for any vessel during the above federal holidays provided at least 12 hour notice is given. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). We have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally this action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### V. Public Participation and Request for Comments



We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.681 to read as follows:

### **§ 117.681 Old Fort Bayou**

The draw of the bridge, mile 1.6 at Ocean Springs, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least eight hour notice is given; on Thanksgiving Day, Christmas Day and New Year's Day the draw shall open on signal if at least 12 hour notice is given; and the draw need not open to vessels from 6:30 a.m. to 8 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. The draw shall open anytime at the direction of the District Commander.

Dated: May 4, 2020

John P. Nadeau

Rear Admiral, U.S. Coast Guard,  
Commander, Eighth Coast Guard District.

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